W.P. No. 1357 of 2004

Hon. P.C. Pant, J.

Heard learned counsel for the petitioner.

By means of this petition, the petitioner has challenged rejection of his application under order IX, Rule 13 of the Code of Civil Procedure, 1908, for setting aside the decree passed in S.C.C. suit no. 3 of 1994.

Heard learned counsel for the petitioner. Perusal of the record shows that the application under order IX, rule 13 was barred by time. However, the same was accompanied with the application for condonation of delay. Both the courts below have rejected the application of petitioner on the ground that he did not comply with the provisions of section 17 of Provincial Small Causes Court Act, 1887.

Learned counsel for the petitioner submitted that he did move an application for compliance of the above provision before the trial court. However both the impugned order show that he made an offer to deposit the decretal amount, subject to the condition that the plaintiff shall not withdraw the amount. And did not deposit is actually. As such the courts below have rightly treated that the compliance of section 17 of the Provincial Small Causes Court, Act, 1887 has not been made.

In the circumstances, this petition is devoid of merits and dismissed in limine.

(P.C. Pant, J.)

Dt. 24.12.2004

SJ